BAIL SLIP

The Appellant in Crl.A.No.836 of 2002/Accused No.1 viz., A.Ramkumar was directed to be released on bail by the order of this Court dated 15.7.2002 and made in Crl.M.P.No.5232/2002 in Crl.A.No.836/2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/7/2006

C O R A M

THE HONOURABLE Mr.JUSTICE R.BALASUBRAMANIAN

A N D

THE HONOURABLE Mr.JUSTICE M.JEYAPAUL

Criminal Appeal Nos.
836 of 2002 and 558 of 2004

1. A. Ramkumar ... Appellant in Crl.A.No. 836 of 2002 (Accused No.1)

2. Bhaskaran ... Appellant in Crl.A.No. 558 of 2004 (Accused No.2)

Vs

The State
rep. by The Inspector of Police
Karimangalam Police Station
Krishnagiri District.
Dharmapuri
(Cr.No.325/99) ... Respondent in both the Criminal Appeals/Complainant.

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Criminal Appeals are filed to set aside the judgment passed in S.C.No.66 of 2000 on the file of the II Additional District Sessions Judge-cum-Chief Judicial Magistrate Court, Krishnagiri dated 15/4/2002.

For appellants ... Mr.S.Doraisamy
in Crl.A.No.836 of 2002

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Mr.N.Doraisamy
for Mr.E.M.K.Yaswant Rao
in Crl.A.No.558 of 2004

For respondents ... Mr.M.Ravindran, SC
as Legal Aid Counsel to assist
the Court.

Mr.R.Viduthalai,
Advocate General to assist the Court
for Mr.N.R.Elango, APP

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C O M M O N J U D G M E N T

(Judgment of the Court was delivered by
Mr.Justice K.JEYAPAUL).

The first accused in Sessions Case No.66 of 2000 on the file of II Additional Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri has preferred Criminal Appeal No.836 of 2002 and the second accused therein has preferred Criminal Appeal NO.558 of 2004. Both the accused stand convicted for offences under Sections 302, 364 and 201 of I.P.C., and sentenced to undergo life imprisonment for the offence under Section 302 I.P.C. together with a fine of Rs.1,000/- each, carrying a default sentence. For the offence under Section 364 of I.P.C., each one of them stands sentenced to undergo three years rigorous imprisonment together with a fine of Rs.1,000/- carrying a default sentence and for the offence under Section 201 I.P.C., each one of them stands sentenced to undergo one year rigorous imprisonment. The sentences are directed to run concurrently.

2. The charge against the accused is that they conspired on 14/3/1999 to do away with the life of Manoj Kumar and thereby committed an offence under Section 120 B of Indian Penal Code. In the course of some transaction on the very same day, at about 11.00 a.m., they kidnapped a minor boy, aged 10 years and thereby they committed an offence under Section 364 of I.P.C. On the very same day, at about 5.00 p.m., in furtherance of the common intention to cause the death of Manoj Kumar, the first accused having throttled Manoj Kumar, put him in a gunny bag, containing stones and pushed him along with the gunny bag in a well and caused his death and thereby, committed an offence punishable under Section 302 of Indian Penal Code. Both the accused attempted to screen the evidence, after the commission of murder and thereby committed an offence under Section 201 of Indian Penal Code, the charge reads further.

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3. On the side of prosecution, as many as 26 witnesses were examined, besides marking 33 documents and 8 material objects.

4. The brief text of the prosecution version as found from the evidence adduced on their side is as follows:-

Vanithamani, P.W.1 and Munusamy, P.W.7 are the parents of the deceased Manoj Kumar. Angichetti, P.W.2 is the father of the first accused Ramkumar. P.W.2 has got married the own sister of Vanithamani, P.W.1. Therefore, Manoj Kumar - since deceased was the cousin brother of the first accused.

5. Munusamy, P.W.7 is carrying on business in textiles. On 14/3/1999, he had been to Erode, in connection with his business venture. At about 11.00 a.m., on the said day, Manoj Kumar, went out of his house to play in the Elementary School play ground at Periyampatti. As he had not returned to the house till 2.30 p.m. on the said day, P.W.1 informed P.W.2 about the missing of Manoj Kumar. Information also was passed on to P.W.7 by P.W.1. P.W.2 being the husband of the sister of P.W.1, lodged a report Ex.P.1 to Karimangalam Police Station in connection with the missing of Manoj Kumar. On 15/3/1999, P.W.1 received a letter through courier, wherein, her husband had been directed to pay a ransom of Rs. 10 lakhs to retrieve their son. The next day i.e., on 16/3/1999, P.W.2 came along with the first accused to her house with another letter addressed to P.W.7, wherein also a sum of Rs.10 lakhs was demanded for the release of Manoj Kumar. In the second letter, there was a specific instruction to hand over the money to the first accused. Seeing the content of the letter, P.W.1 got afraid and she did not divulge the same to the Police.

6. On 18/3/1999, at about 9.00 a.m., when the Village Administrative Officer of Karimangalam was present along with his assistant at Karimangalam Village Chavadi, the second accused Baskaran, came down to his office and gave a confession to him. In the confession, the second accused has stated that on 14/3/1999, as per the instruction of the first accused, the second accused took Manoj Kumar from the play ground of the School and entrusted him to Ram Kumar, the first accused herein. All the three went by TVS 50 vehicle to Kottumanahalli, where they met Murugan, P.W.4 and sought for a gunny bag and rope and they took tender coconut there. Thereafter, they proceeded to Thirumanahalli dam. Since there was human traffic, they proceeded to Osahalli lake. On the way, they met one Hussain. In a well situate on the south of Osahalli lake, they put two stones inside the gunny bag and having seated Manoj Kumar inside, after retrieving the chain from him, he was pushed into the well. Thereafter, they returned to Karimangalam. On 15/3/1999 at the house of Poovazhagi, at the instruction of the first accused, second accused wrote a letter, demanding a sum of Rs.10

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lakhs for the release of Manoj Kumar. Again on 16/3/1999, another letter was written, demanding the very same amount, but with an instruction to hand over the said amount to the first accused Ram Kumar. As the first accused did not turn up till 2.00 p.m., the second accused got frightened and came down to the Village Administrative Officer and unfolded his heart to him.

7. The Village Administrative Officer, P.W.6, having recorded the confession statement Ex.P.7 from the second accused, prepared a report Ex.P.8. P.W.2 had already submitted a complaint Exs.P.1 to P.25 at about 8.30 a.m. on 15/5/1999. On the basis of such complaint, a case in Crime No.325 of 1999 was registered classifying the case as missing of a boy. Sivanesan, P.W.25, prepared printed First Information Report Ex.P.31. When P.W.25 was in search of the boy, who was missing, on the basis of the complaint given by P.W.2. The Village Administrative Officer, P.W.6 came to the Police Station with the confession statement Ex.P.7 and the special report Ex.P.8 to P.W.25 along with the second accused. Based on such a report, the case in Crime No.325 of 1999 was altered into one under Section 364, 302 and 379 of Indian Penal Code. P.W.25, prepared express report Ex.P.19 and despatched the same to the Judicial Magistrate.

8. The Inspector of Police P.W.26, having received the copy of First Information Report from P.W.25, examined the second accused. The second accused gave voluntary statement in the presence of P.W.6. The accused informed him that he would show the well where the boy was pushed into and the place where the golden chain was burked.

9. P.W.26 went along with P.W.6 to the well at about 12.30 p.m., on 18/3/1999. He prepared a rough sketch P.W.32, reflecting the scene of occurrence. He also prepared Observation Mahazar Ex.P.10 in the presence of P.W.6. He arranged to retrieve the gunny bag found floating in the well. In the gunny bag, the dead body of Manoj Kumar was found and the same was identified by the witnesses P.Ws.1 to 5 in the presence of Panchayathdars. P.W.26 held inquest between 1.30 p.m. to 3.30 p.m. and prepared inquest report Ex.P.33.

10. Murugan, P.W.4 is the Schoolmate of the first and second accused. Of course, he was treated as hostile and they were permitted to be cross-examined by the prosecution. But he has spoken to the fact that he spotted the first and second accused along with a boy on 14/3/1999.

11. Murugan, P.W.9 and Selvam P.W.10 have also deposed before the Court that they spotted the accused along with a boy in the evening on 14/3/1999. Kaliappan, P.W.11 had turned hostile to the version of prosecution. Hussain, P.W.12 though turned hostile,

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has spoken to the fact that he also saw the accused along with a boy. Balaji, P.W.13 and Ramesh, P.W.14 have also deposed that they saw the accused along with a boy. Mariappan, P.W.19 is working under Shanmugam, P.W.18 in a courier service. They have spoken to the service of the letters on Vanithamani, P.W.1. Poovazhagi, P.W.20 and Sakthivel, P.W.21 have not spoken anything in favour of the prosecution.

12. Doctor Baby Saroja, P.W.3, having received a requisition from the Inspector of Police, P.W.28 through the Constable Devendiran, P.W.15 commenced post mortem examination on the dead body of Manoj Kumar at 4.15 p.m. on 18/3/1999. She found the following features on the dead body of Manoj Kumar.

"INTERNAL EXAMINATION:-

Abdomen: Stomach walls pale. Contained partly digested rice (rice with small pieces of beet root) 100 gms.

Intestine: Pale

Liver: 1200 gms. - Pale

Spleen: 100 gms. - Normal.

Urinary Bladder: Empty

Kidney: 100 gms each - Normal

External genitalia bloated.

Thorax:- Heart:- 250 gms. - Chambers empty

Right Lung: 300 gms. Left Lung: 275 gms - normal

Partly decomposed. No fracture of ribs.

Hyoid bone - preserved

Skull: Vault normal. Coverings of brain intact.

Brain liquified flowing out when the membranes were (nc).

Vertebral Column intact.

Pelvis - No fracture.

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Stomach and its contents, part of intestines and its contents, Part of liver and one kidney, one lung, Hyoid bone and a sample of preservative were preserved for chemical pathological examination."

13. The post-mortem Doctor, in her post mortem certificate, Ex.P.3 has opined the deceased appeared to have died about 72 to 96 hours prior to the post mortem due to Asphyxia on account of throttling. The hyoid bone of Manoj Kumar was sent for examination, at the request of the Inspector of Police. The expert Doctor Vallinayagam, P.W.24 has spoken to the fact that there was Ante mortem fracture present in the hyoid bone in the bone case report Ex.P.4.

14. The apparels found on the dead body were recovered by the post mortem constable, P.W.15 and the same were entrusted to P.W.26 for investigation. P.W.26 recovered the letters received by P.W.7 through courier service. P.W.16 also seized the gunny bag, M.O.5, stones two in number, M.O.6 series and rope, M.O.7 under relevant seizure mahazar in the presence of the aforesaid witnesses.

15. P.W.26 obtained the sample writings from the second accused Baskaran and thereafter, the second accused was remanded to judicial custody. The M.Os were also sent to the learned II Additional Distict Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri.

16. The next day i.e. on 19/3/199, at about 6.00 a.m., P.W.26 arrested the second accused and recovered TVS 50 vehicle, M.O.4 from him under relevant seizure mahazar. The second accused gave confession statement voluntarily and the same was recorded by P.W.26.

17. P.W.26 made a requisition to the learned Chief Judicial Magistrate, Krishnagiri to engage a Judicial Magistrate, for the purpose of recording the confession statement of the second accused Baskaran and Murugan, P.W.9. The learned Judicial Magistrate, Sri Arumugam, P.W.5 has recorded the confession of the second accused and also the statement of P.W.9. It is found that the learned Judicial Magistrate has failed to observe the mandatory requirements under Section 164 (4) of Code of Criminal Procedure, when he conducted the proceedings under the aforesaid provision of law.

18. Handwriting expert Murali Krishna, P.W.8, having analysed the sample handwriting of the second accused with the hand

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writing found in the disputed letters, has come to the conclusion that the letters have been written only by the second accused.

19. P.W.26 having completed the investigation, laid final report as against the accused under Sections 120 B, 364 and 302 read with Section 34 and Section 201 of I.P.C.

20. The incriminating portions found in the testimony of the prosecution witnesses were put in the form of questionnaire under Section 313 of Code of Criminal Procedure. The accused have denied each and every incriminating portions culled out and put to them. They have stated that a false case was foisted on them.

21. On the side of the defence, the father of the second accused was examined as D.W.1. The birth certificate showing his Date of Birth as 7/5/1981 was marked as Ex.P.1. P.W.2, the father of the first accused was recalled and through him, the birth certificate, Ex.D.2 showing the Date of Birth of the first accused as 25/6/1981 was marked.

22. The trial Judge having adverted to the extra judicial confession given by the second accused, the last seen theory spoken to by P.Ws.9, 10 and 12 to 14, the recovery of the chain at the instance of the second accused, the experts opinion given by Murali Krishna, P.W.8 and the opinion expressed in the hyoid bone test and the available medical evidence, has come to the conclusion that the first and second accused having kidnapped the minor boy, aged 10 years, in furtherance of their common intention to do away with his life, caused his death and committed murder and thereafter, they attempted to screen the evidence and thereby, they committed offences punishable under Sections 364, 302 and 302 read with Section 34 and 201 of I.P.C.

23. The learned counsel appearing for the first accused would submit that extra judicial confession alleged to have been given by the second accused is not at all reliable, in as much as varied version is found in the extra judicial confession from that of judicial confession given before the learned Judicial Magistrate, P.W.5. The judicial confession recorded by the Judicial Magistrate, P.W.5 cannot also be safely relied upon in as much as the learned Judicial Magistrate has not chosen to adhere to the mandatory requirements found under Section 164 (4) of the Code of Criminal Procedure, 1973. There is nothing on record to show that food was supplied by the accused to the missing boy, Manoj Kumar, just prior to his death. Referring to the post mortem certificate, the learned counsel appearing for the first accused would submit that, partially digested rice and carrot particles were found in the stomach of Manoj Kumar. He would further submit that a material link in the chain

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spoken to by the prosecution witnesses is missing. When the prosecution has come out with a case that the boy was playing with his mates at the play ground just before kidnapping, the prosecution has miserably failed to examine any one of his playmates to establish that the second accused took away the boy, when he was playing in the play ground of Elementary school. The evidence of P.W.13 cannot be safely relied upon in as much as he being the relative of the missing boy, had failed to divulge the fact either to P.W.1 or to P.W.7 that their son was found lastly in the company of the accused, more especially when the Police were in search of the missing boy for about two to three days. Therefore, the benefit of doubt will have to be conferred on the first accused, he would submit.

24. The learned counsel appearing for the second accused would submit that the second accused would not have ventured to go to the house of P.W.1, if at all he had played any role in the commission of murder. It is his submission that, without the sanction of the Judicial Magistrate, the Investigating Official has chosen to obtain sample writing of the second accused and sent for experts' opinion and that therefore, the opinion expressed by the handwriting expert Murali Krishna, P.W.8 loses its credibility. The Judicial confession given by the second accused would go to show that he had not played any role in committing any of the offences alleged against him. Therefore, the learned counsel appearing for the first and second accused would submit that they are entitled to acquittal.

25. The learned Additional Public Prosecutor would submit that though there is no ocular evidence to the occurrence, the prosecution has successfully come out with cogent chain of circumstances to speak to the role of not only the first accused but also the second accused. The learned trial Judge has rightly relied upon the extra judicial confession and recorded the judgment of conviction as against the accused and that therefore, there is no warrant for interference with the well considered judgment passed by the trial Judge.

26. The father of the first accused has got married the own sister of Vanithamani, P.W.1. Therefore, the missing boy, Manoj Kumar is found to be the cousin brother of the first accused. Murugan, P.W.9 has categorically spoken to the fact that both the accused came with a boy aged about 10, at about 12.00 noon on 14/3/1999 to his house. He has stated that he supplied tender coconut to all of them. So it is found that, at about 12.00 noon on 14/3/1999, the missing boy was found in the company of the first and second accused.

27. Selvam, P.W.10 has spotted the accused, coming along with a boy in a TVS 50 vehicle. He was crossing the bridge at about 3.00 p.m., on 14/3/1999, when he spotted all of them in a TVS 50

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vehicle. He identified both the accused in the Court. Of course, he has partly turned hostile to the version of the prosecution. Despite that, it is found from the testimony of P.W.10 that, at about 3.00 p.m., on 14/3/1993, both the accused were found with a boy. Hussain, P.W.12 has also witnessed both the accused coming in a TVS 50 vehicle along with a small boy at the very same time when he was proceeding to Melpattagapatti by bicycle.

28. Balaji, P.W.13 and Ramesh P.W.14 have also met the accused at 3.00 p.m., on the said day along with Manoj Kumar – since deceased.

29. From the testimony of P.Ws.9, 10 and 12 to 14, it is quite clear that the missing boy, Manoj Kumar was found in the company of the accused prior to his death. There is no reason to disbelieve the testimony of those witnesses. They are all independent witnesses, it is found and therefore, relying upon their testimony, we find that the missing boy was very well in the company of the accused till about 3.00 p.m. on 14/3/1999.

30. The Village Administrative Officer Selvaraj, P.W.6 has recorded the extra judicial confession of the second accused. The second accused had waited for the arrival of the first accused, who has gone to his Village to come with money. Since he has not turned up, he had no other go, but to approach the Village Administrative Officer, P.W.6, to confess the whole crime committed by him and the first accused. P.W.6 has categorically deposed before the trial Court that, at about 9.00 a.m. on 18/3/1999, the second accused came to his office at Karimangalam and gave a statement that, it was he who kidnapped the missing boy, Manoj Kumar from the premises of Elementary School, at the behest of the first accused and thereafter, having taken the boy in a TVS 50, Manoj Kumar was throttled by the first accused and thereafter, he was put in a gunny bag along with two stones and dropped the same inside the well.

31. It is found that only at the instance of the second accused, based on the confession given by him, the dead body of Manoj Kumar was fished out from a well by the investigating officer. It was he who showed the well, where Manoj Kumar was dropped in a gunny bag. It is further found that only based on the confession made by him that the chain worn by Manoj Kumar was recovered from him. The whole recovery had been made based on the confession made by the second accused. We do not find any artificiality in recording the confession statement of the second accused by the Village Administrative Officer. There is no reason to discard the evidence of Village Administrative Officer in as much as the recovery also has been made successfully, based on such confession given by the second accused to the Village Administrative Officer, P.W.6.

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32. The Inspector of Police, P.W.26, has chosen to obtain the sample handwriting from the second accused, as he has stated in the confession statement that he was the author of those two letters sent to the address of Munusamy, P.W.7 the father of Manoj Kumar. Muralikrishna, P.W.8, the handwriting expert has given an opinion in his report that the sample handwriting of the second accused did tally with the handwriting found in the disputed letters alleged to have been recovered from Munusamy, P.W.7. There is no explanation from the second accused for the letters scribed by him in a threatening posture to P.W.7, demanding a sum of Rs.10 lakhs for the release of his son Manoj Kumar.

33. As per Section 30 of the Indian Evidence Act, 1872, if the accused are tried jointly for the very same offence, the confession made by one of such persons affecting himself and the other co-accused can be relied upon, if it is proved. The extra judicial confession given by the second accused to P.W.6, speaks of the material involvement of the first accused in this case. Such an extra judicial confession speaking about the involvement of the first accused will have to be seen in the light of the last seen theory projected by the prosecution through P.Ws.9, 10 and 12 to 14.

34. On 16/3/1999, when the last letter was sent to P.W.7 with a specific instruction to pay a ransom of Rs.10 lakhs to the first accused in order to retrieve the missing boy, the first accused along with his father had gone to the house of Vanithamani, P.W.1 to show the letter. The act of the first accused will have to be seen in the back ground of the extra judicial confession given by the second accused to the effect that he was waiting for the arrival of the first accused with the money demanded in the letter addressed to P.W.7.

35. Of course A.2 has not spoken anything about the food supplied to the victim, just before the occurrence. In all probability going by the post mortem report, the boy should have been supplied with some food just prior to the occurrence. For the reasons best known, such a fact which had been within the exclusive knowledge of the first and second accused had not been divulged by them. Unless such a revelation flows either from the first accused or from the second accused, the investigating agency would definitely be in the dark. Quite probably, the accused just before the occurrence would have supplied rice with carrot and that was the reason why some particles were found in the stomach of the deceased Manoj Kumar. We find that it is not a material link in the chain of circumstances which would affect the case of prosecution. Firstly, we find that such a link was not relied upon by the prosecuting agency. Secondly, as we have already held that it was not so material link to affect the case of prosecution.

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36. Of course, the investigating agency should have examined some playmates of the victim boy who were found in his company just before kidnapping. It appears, the investigating agency has concentrated only on the factual scenario which led to the murder of the victim. It is true that it is a lapse on the part of the investigating agency not to examine the playmates of the missing boy. That might have further strengthened the case of the prosecution that the boy was kidnapped only by the second accused. When there is voluminous evidence to show that the missing boy was found in the company of the first and second accused right from 12.00 noon up to 3.00 p.m. on 14/3/1999, we find that such a lapse on the part of the investigating agency, does not go to the root of the matter.

37. P.W.13 would state that he was related to P.W.1. It is his further version that he knew very well Manoj Kumar, the victim in this case. He would further state that he was aware of the fact that Police were looking out for the missing boy, based on the complaint given by P.W.2. Had he doubted that the missing boy was murdered, he would have definitely divulged the fact that he found the boy in the company of the first and second accused. It is also seen that the first accused is closely related to Manoj Kumar, the victim in this case. There is every reason for P.W.13 not to doubt the integrity of the first accused. Therefore, the non-disclosure of the last seen account to the close relative of P.W.13, does not create a dent in the story of the prosecution.

38. The learned Judicial Magistrate Sri Arumugam, P.W.5 has failed to make an endorsement at the foot of the confession statement recorded from the second accused as required under Section 164 (4) of the Code of Criminal Procedure, 1973. As the mandatory requirement had not been adhered to by the learned Judicial Magistrate, the confession of the second accused recorded by the learned Judicial Magistrate under Section 164 cannot at all be relied upon by this Court.

39. The medical evidence and the hyoid bone test report would establish that the boy was throttled to death. No explanation has been offered by the first and second accused as to what had happened to the boy, who was found in their Company. Therefore, we find that though there is no direct evidence in this case, the prosecution had established their case as against the accused for offences under Sections 364, 302, 302 r/w. Section 34 and 201 of I.P.C.

40. The first accused was born on 26/5/1981 as per the birth certificate Ex.D.2 and the second accused was born on 7/5/1981 as per Ex.D.1. The occurrence had taken place on 14/3/1999. The Juvenile Justice (Care and Protection of Children) Act, 2000, came

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into force on 1/4/2001. Therefore, the Juvenile Justice (Care and Protection of Children) Act, 2000, will not apply to the instant case.

41. In the Juvenile Justice (Care and Protection of Children) Act, 2000, the Juvenile was defined as a person who has not completed eighteenth year of age, irrespective of the gender. But in the erstwhile, Juvenile Justice Act, 1986, a Juvenile was defined as a boy, who had not attained the age of 16 years and a girl who had not attained the age of 18 years. Both the accused were found two months short of 18 years of age at the time when the offence was committed on 14/3/1999. Therefore, the Juvenile Justice Act, 1986, will not be applicable to the accused herein who had crossed the age of 16 years at the time when the occurrence took place on 14/3/1999.

42. In this context, the learned Additional Public Prosecutor, submitted an authority reported in (2005) 3 SUPREME COURT CASES 551 (PRATAP SINGH Vs. STATE OF JHARKHAND AND ANOTHER), wherein it has been held as follows:-

> "37. The net result is:
>
> (a) The reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in the Court.
>
> (b). The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1/4/2001."

43. Quoting Rule 62 of the Juvenile (Care and Protection of Children) Rules, the Honourable Supreme Court has held that the intention of the legislature was that the Provisions of the 2000 Act were to apply for the pending cases provided, the present accused was a Juvenile within the meaning of the terms as he defined in the 2000 Act i.e., he or she had not crossed 18 years of age as on 1/4/2001. As on 1/4/2001, both the accused in this case were short of one month to 20 years of age. Therefore, the Juvenile Justice (Care and Protection of Children) Act, 2000, will not apply to the accused who have completed 18 years as on 1/4/2001. We find that the accused can neither invoke the old Act 1986 or the new Act 2000, to seek the beneficial protection found there under as they had crossed 16 years at the time of commencement of the offence and crossed 18 years as on 1/4/2001.

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44. As we were entertained a doubt at the very inception whether the Sessions Court would have had power to try a case of a Juvenile, we appointed Sri M.Ravindran, Senior Counsel as amicus curiae and we also sought the able assistance of the Advocate General. Both of them had burnt the mid-night oil, reflecting upon the scope and ambit of old Act, 1986 and the new Act 2000 in the background of the conflicting decisions that had arisen before various High Courts and the ultimate verdict rendered by the Supreme Court putting at rest, the controversies. Both of them have submitted that though there is an embargo under Section 24 of Code of Criminal Procedure for the Juvenile Justice Board to try the offences punishable with death or imprisonment for life, the definition for "Juveniles in conflict with law" found in Section 2 (l), powers of the Juvenile Justice Board incorporated under Section 4 and the orders that may be passed recording the Juvenile by the Board under Section 15 of the new Act would give sufficient indication that the Juvenile Justice Board has the exclusive domain to deal with all types of offences irrespective of their gravity.

45. Enquiry that can be held by the Board under Section 4 and the orders that may be passed regarding Juvenile by the Board under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, would go to show that the Sessions Court has been completely denuded of the power to deal with even the offence punishable with death or imprisonment for life. They have further submitted that the Act 2000, does not seek to punish the Juvenile who has committed an offence. It only mandates a specialised approach towards Prevention and treatment of Juvenile delinquency. They also referred the authority reported in 1981 CRI.L.J- 1497 (RAGHBIR Vs. STATE OF HARYANA), wherein it has been held as follows:-

> "The purpose of the Haryana Legislature as well as of the Parliament in enacting the Haryana Children Act and the Central Children Act respectively was to give separate treatment to delinquent children in trial, conviction and punishment for offences including offences punishable with death or imprisonment for life. Section 27 of the Criminal P.C. is not 'a specific provision to the contrary' within the meaning of Section 5 of the Code; the intention of the Parliament was not to exclude the trial of delinquent children for offences punishable with death or imprisonment for life, in as much as S.27 does not contain any expression to the effect "notwithstanding anything contained in any Children Act passed by any State Legislature". Parliament certainly was not unaware of the

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existence of the Haryana Children Act coming into force a month earlier or the Central Children Act coming into force nearly fourteen years earlier. What S.27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specially empowered under the Children Act, 1960. It is an enabling provision, and, has not affected the Haryana Children Act in the trial of delinquent children for offences punishable with death or imprisonment for life. Criminal Procedure appears in Item 2 of the Concurrent List of the Seventh Schedule of the Constitution. One of the circumstances under which repugnancy between the law made by the State and the law made by the Parliament may result is whether the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable. In the instant case it can be held that the relevant provisions of the Code and the Act can co-exist. Their spheres of operation are different."

46. The Haryana Children Act was put to test before the Supreme Court of India. The similar provisions were found in the Haryana Children Act, 1974 also. The Supreme Court has held the provisions under Section 24 of Code of Criminal Procedure and the Children Act 1978 can co-exist as their spheres of operation are totally different.

47. In yet another authority reported in AIR 1979 SUPREME COURT - 1839 (ROHTAS Vs. STATE OF HARYANA AND ANOTHER), the Honourable Supreme Court has confirmed the decision taken by the Sessions Judge referring the Sessions Case to the Magistrate who has been empowered to deal with "the children in conflict with law" under the Haryana Act in the following terms:-

"8. In these circumstances, we are clearly of the opinion that the High Court was in error in holding that the Code of 1973 overruled the Haryana Act and that the appellant should have been tried under the Code of 1973. We are satisfied that the view taken by the Sessions Judge on this point was correct and the case of the appellant should have been referred to the Magistrate concerned for trial in accordance with the provisions of the Haryana Act."

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48. Now, it has been well settled by the Supreme Court of India that "Juvenile in conflict with law" has to be tried only by the specially constituted Court and not by the regular Court irrespective of the embargo found under Section 24 of the Code of Criminal Procedure.

49. In this case, as the Juvenile had crossed 16 years, when the old Act 1986 was in operation and crossed 18 years as on 1/4/2001, when the new Act 2000 came into operation, the Sessions Judge has rightly taken up the case for trial and tried the accused.

50. We place on record our appreciation for the unstint efforts taken both by Sri M.Ravindran, Senior Counsel and Mr.R.Viduthalai, Advocate General, to assist the Court in discharge of its solemn function.

51. At any rate, we find that the accused have not crossed 21 years to be deprived of the benefits of the Tamil Nadu Borstal Schools Act 1925. We find that as per Section 2 (1) of the said Act, both the appellants are found to be adolescent offenders. If the appellants make any request to the Government to consider their case under Section 10-A of the Tamilnadu Borstal Schools Act, it is for them to decide the issue in a manner known to law without in any way being influenced by anything said by us in this judgment within three months from the date of receipt of such a request in writing.

52. For the foregoing reasons, the judgment of conviction and sentence recorded by the learned II Additional District Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri in S.C. No.66 of 2000 as against both the accused stands confirmed and both the appeals are consequently dismissed.

mvs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The II Additional District Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri.

2. - do - through The Principal Sessions Judge, Dharmapuri at Krishnagiri.

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3. The Judicial Magistrate, Palacode.

4. - do - through the Chief Judicial Magistrate,
   Dharmapuri at Krishnagiri.

5. The District Collector, Dharmapuri

6. The Director General of Police,Chennai.

7. The Public Prosecutor, High Court, Chennai.

8. The Superintendent, Central Prison, Vellore.

9. The Superintendent, Central Prison, Salem.

10. The Inspector of Police, Karimangalam Police
    Station, Dharmapuri District.

11. The Station House Officer,
    D-5, Triplicane Police Station,
    Chennai-5.

1 cc to Mr.S.Doraisamy, Advocate, SR.33138

NG (CO)

dv/19.8.06

Crl.A.Nos.836 of 2002 and
558 of 2004

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